

1  
2  
3  
4  
5  
6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**

8  
9 First Service Networks Incorporated,

10 Plaintiff,

11 v.

12 First Service Maintenance Group  
13 Incorporated,

14 Defendant.

No. CIV 11-1897 PHX DGC

**CASE MANAGEMENT ORDER**

15 On **October 5, 2012**, a Case Management Conference was held pursuant to  
16 Rule 16(b) of the Federal Rules of Civil Procedure. The parties met before the  
17 conference in accordance with Rule 26(f) and prepared a joint case management report.  
18 On the basis of the Case Management Conference and the joint report,

**IT IS HEREBY ORDERED:**

19 1. Deadline for Initial Disclosures. Initial disclosures required by Federal  
20 Rule of Civil Procedure 26(a), if not already exchanged, shall be exchanged no later than  
21 **October 9, 2012**. The parties shall file with the Clerk a Notice of Initial Disclosure,  
22 rather than copies of the actual disclosures.

23 2. Deadline for Joining Parties, Amending Pleadings, and Filing Supplemental  
24 Pleadings. The deadline for joining parties, amending pleadings, and filing supplemental  
25 pleadings is **30 days** from the date of this Order.

26 3. Discovery Limitations. Depositions shall be limited to seven hours each as  
27 provided in Rule 30(d)(1) of the Federal Rules of Civil Procedure. Each side may  
28

1 propound up to 25 interrogatories, including subparts, 25 requests for production of  
2 documents, including subparts, and 25 requests for admissions, including subparts.

3 4. Deadline for Completion of Fact Discovery. The deadline for completing  
4 fact discovery, including discovery by subpoena, shall be **April 5, 2013**. To ensure  
5 compliance with this deadline, the following rules shall apply:

6 a. Depositions: All depositions shall be scheduled to commence at  
7 least **five working days** prior to the discovery deadline. A deposition commenced five  
8 days prior to the deadline may continue up until the deadline, as necessary.

9 b. Written Discovery: All interrogatories, requests for production of  
10 documents, and requests for admissions shall be served at least **45 days** before the  
11 discovery deadline.

12 c. The parties may mutually agree in writing, without Court approval,  
13 to extend the time provided for discovery responses in Rules 33, 34, and 36 of the Federal  
14 Rules of Civil Procedure. Such agreed-upon extensions, however, shall not alter or  
15 extend the discovery deadlines set forth in this Order.

16 5. Deadlines for Disclosure of Experts and Completion of Expert Discovery.

17 a. The parties shall provide full and complete expert disclosures as  
18 required by Rule 26(a)(2)(A)-(C) of the Federal Rules of Civil Procedure, no later than  
19 **May 3, 2013**, on any issue for which they bear the burden of proof.

20 b. Rebuttal expert disclosures, if any, shall be made no later than  
21 **June 7, 2013**. Rebuttal experts shall be limited to responding to opinions stated by initial  
22 experts.

23 c. Expert depositions shall be completed no later than **July 12, 2013**.  
24 As with fact witness depositions, expert depositions shall be scheduled to commence at  
25 least five working days before the deadline.

26 d. Disclosures under Rule 26(a)(2)(A) must include the identities of  
27 treating physicians and other witnesses who will provide testimony under Federal Rules  
28 of Evidence 702, 703, or 705, but who are not required to provide expert reports under

1 Rule 26(a)(2)(B). Rule 26(a)(2)(C) disclosures are required for such witnesses on the  
 2 dates set forth above. Rule 26(a)(2)(C) disclosures must identify not only the subjects on  
 3 which the witness will testify, but must also provide a summary of the facts and opinions  
 4 to which the expert will testify. The summary, although clearly not as detailed as a Rule  
 5 26(a)(2)(B) report, must be sufficiently detailed to provide fair notice of what the expert  
 6 will say at trial.<sup>1</sup>

7 e. As stated in the Advisory Committee Notes to Rule 26 (1993  
 8 Amendments), expert reports disclosed under Rule 26(a)(2)(B) must set forth “the  
 9 testimony the witness is expected to present during direct examination, together with the  
 10 reasons therefor.” Full and complete disclosures of such testimony are required on the  
 11 dates set forth above; absent truly extraordinary circumstances, parties will not be  
 12 permitted to supplement their expert reports after these dates.

13 f. Each side shall be limited to one retained or specially employed  
 14 expert witness per issue.

15 6. Discovery Disputes.

16 a. The parties shall not file written discovery motions without leave of  
 17 Court.<sup>2</sup> If a discovery dispute arises, the parties promptly shall contact the Court to  
 18 request a telephone conference concerning the dispute. The Court will seek to resolve the  
 19 dispute during the telephone conference, and may enter appropriate orders on the basis of  
 20 the telephone conference. The Court may order written briefing if it does not resolve the  
 21 dispute during the telephone conference.

22 b. Parties shall not contact the Court concerning a discovery dispute  
 23 \_\_\_\_\_

24 <sup>1</sup> In *Goodman v. Staples The Office Superstore, LLC*, 644 F.3d 817 (9th Cir. 2011), the  
 25 Ninth Circuit held that “a treating physician is only exempt from Rule 26(a)(2)(B)’s written  
 26 report requirement to the extent that his opinions were formed during the course of treatment.”  
 27 *Id.* at 826. Thus, for opinions formed outside the course of treatment, Rule 26(a)(2)(B) written  
 28 reports are required. *Id.* For opinions formed during the course of treatment, Rule 26(a)(2)(C)  
 disclosures will suffice.

<sup>2</sup> The prohibition on “written discovery motions” includes any written materials delivered  
 or faxed to the Court, including hand-delivered correspondence with attachments.

1 without first seeking to resolve the matter through personal consultation and sincere  
2 effort as required by Local Rule of Civil Procedure 7.2(j). Any briefing ordered by the  
3 Court shall also comply with Local Rule of Civil Procedure 7.2(j).

4 c. Absent extraordinary circumstances, the Court will not entertain fact  
5 discovery disputes after the deadline for completion of fact discovery, and will not  
6 entertain expert discovery disputes after the deadline for completion of expert discovery.

7 7. Deadline for Filing Dispositive Motions.

8 a. Dispositive motions shall be filed no later than **August 16, 2013**.  
9 Such motions must comply in all respects with the Federal Rules of Civil Procedure and  
10 the Local Rules.

11 b. No party shall file more than one motion for summary judgment  
12 under Rule 56 of the Federal Rules of Civil Procedure unless permission is first obtained,  
13 by joint telephone call, from the Court.

14 c. Failure to respond to a motion within the time periods provided in  
15 Local Rule of Civil Procedure 7.2 will be deemed a consent to the denial or granting of  
16 the motion and the Court may dispose of the motion summarily pursuant to Local Rule of  
17 Civil Procedure 7.2(i).

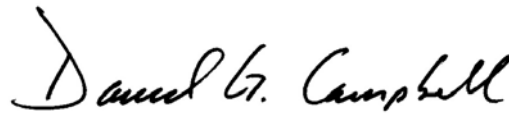
18 d. The parties shall not notice oral argument on any motion. Instead, a  
19 party desiring oral argument shall place the words "Oral Argument Requested"  
20 immediately below the title of the motion pursuant to Local Rule of Civil Procedure  
21 7.2(f). The Court will issue an order scheduling oral argument as it deems appropriate.

22 8. Deadline for Engaging in Good Faith Settlement Talks. All parties and  
23 their counsel shall meet in person and engage in good faith settlement talks no later than  
24 **December 21, 2012**. Upon completion of such settlement talks, and in no event later  
25 than five working days after the deadline set forth in the preceding sentence, the parties  
26 shall file with the Court a joint report on settlement talks executed by or on behalf of all  
27 counsel. The report shall inform the Court that good faith settlement talks have been held  
28 and shall report on the outcome of such talks. The parties shall indicate whether

1 assistance from the Court is needed in seeking settlement of the case. The parties shall  
2 promptly notify the Court at any time when settlement is reached during the course of  
3 this litigation.

4 9. The Deadlines Are Real. The parties are advised that the Court intends to  
5 enforce the deadlines set forth in this Order, and should plan their litigation activities  
6 accordingly. The parties are specifically informed that the Court will not, absent truly  
7 unusual circumstances, extend the schedule in this case to accommodate settlement talks.

8  
9 Dated this 17th day of October, 2012.

10  
11   
12

13 \_\_\_\_\_  
14 David G. Campbell  
15 United States District Judge  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28